

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3629 of 1988

with

SPECIAL CIVIL APPLICATION No 3898 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?  
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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAMJI DHANJI AHIR

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Appearance:

1. Special Civil Application No. 3629 of 1988  
MR HARDIK C RAWAL for Petitioner  
MR HK RATHOD for Respondent No. 1
2. Special Civil ApplicationNo 3898 of 1988  
MR HK RATHOD for Petitioner  
MR HARDIK C RAWAL for Respondent No. 1

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 14/09/98

## ORAL JUDGEMENT

Both these petitions are arising out of one and the same judgment and award dated 27th January, 1988 passed by the Labour Court, Rajkot whereby Gujarat State Road Transport Corporation was ordered to give fresh appointment to Ramjibhai Dhanjibhai Ahir to his original post within one month from the date of publication of the award. In default, the workman shall be entitled to back wages from the date of default till reinstatement. The respondent - Corporation has filed Special Civil Application No. 3629/88 seeking for quashing the judgment and award dated 27th January, 1988 passed by the Labour Court, Rajkot in LCR 1911/88. No interim order was passed by this Court. Special Civil Application No. 3898/88 is filed by the employee against the respondent-Corporation for setting aside the direction and the award denying of the continuous services of the petitioner and back wages of the interim period and also for giving direction to the respondent - Corporation to pay full back wages of the interim period and continuation of service. No interim order was passed by this Court.

2. The workman has filed the statement of claim that he was serving as a driver in the respondent Corporation and his services were terminated by the respondent Corporation under Regulation No. 81 by the order dated 2-8-1988. He was given charge - sheet in the matter of beating the conductor namely Mulu Dahya when the conductor was on duty in the bus running from Porbandar to Rajkot on 24-8-1974. That inquiry into the said misconduct was postponed. But the case of consumption of liquor on 24-8-1974 was filed in the Criminal Court. These two cases were filed in the Criminal Court, one for beating a public servant on duty and another for consuming liquor and the Criminal Court convicted the workman u/s 66 (B) and 85 (3) of the Bombay Prohibition Act and sentenced to pay fine of Rs. 75/- by the order dated 30-6-1975. On the basis of that order of conviction, the services of the workman were terminated on 2-8-1988 under Regulation No. 81. The termination order was challenged on the ground that no show cause notice was given to the workman for terminating his services nor any notice of pay or retrenchment compensation was paid to the workman. As the opportunity to defend was denied, the order of termination of services of the petitioner was illegal and was against the principle of natural justice. The termination order of the petitioner was also illegal in view of the fact that the workman was not granted retrenchment compensation and he demanded for reinstatement on 14-2-79

but he was replied on 22-2-79 and advised not to do correspondence in connection. The workman thought that no proceedings could be initiated against him. Thereafter, he contacted the Union Leaders and hence some delay has occurred which could be condoned. The workman applied for reinstatement i.e. continuous service with full back wages. The Labour Court was convinced with the conditions of the workman and that he was discharged from the service without compliance of the provisions of Section 25 (f) of the Industrial Disputes Act, 1947 and discharge of the workman amounts to retrenchment and hence the workman should be reinstated in service with all consequential benefits.

3. The respondent - Corporation has also stated in its written statement that the workman was discharged as the punishment was awarded by the Criminal Court against him and the Labour Court thought that it was discharge simpliciter and not by way of punishment after holding inquiry of misconduct alleged against him. The Labour Court, Rajkot found that the termination of the services of the workman falls under the term "retrenchment". The workman was admittedly not paid retrenchment compensation. This Court has held in the case of M.P. Ramanandi Vs. Gujarat State Warehousing Corporation, reported in 1985 (2) GLR 1040, that pre-condition for valid retrenchment has not been satisfied, termination of services is ab initio void, invalid and improper and that the persons whose services have been terminated must be deemed to be in continuous service. The argument of the respondent - Corporation was that the workman was not entitled to any relief whatsoever as he slept over his right for more than six years. In the present case, the Labour Court also considered the arguments of the respondent - Corporation basing on the case of M/s. Shalimar Works Ltd. Vs. Their Workman, reported in AIR 1959 SC 1217 that the workman is not entitled to any relief as he was guilty of laches for invoking his rights for a period of more than six years. In the present case, the termination of the petitioner was effected in the year 1978 and the workman has sought reference in the year 1984. It was also contended on behalf of the respondent - Corporation that conviction was imposed in the year 1978 and the workman sought for reference in the year 1984. As such later reference should not be heard. But the Labour Court, Rajkot after going through the materials on record and considering the facts and circumstances of the case, came to a conclusion that the Corporation itself has taken action against the workman after three years and a month from the date of conviction by the Criminal Court. However, so far as

continuity of service and back wages are concerned the workman cannot claim the same in view of delay of more than six years in seeking the reference. The workman must have earned during the aforesaid period and the Labour Court directed to give fresh appointment to the employee to his original post without back wages and without continuity of service by the order under challenge.

4. I have gone through the impugned order and heard the learned counsel for the parties.

5. A direction for fresh appointment appears to have been given. But no direction is given for compensation for the retrenchment. Learned counsel for the petitioner pointed out that the petitioner has received notice dated 24th July, 1998 that he has to retire on 31st January, 1999. Therefore, the petitioner has to serve the Corporation only for a period of about four months. I do not find any illegality or infirmity in the order passed by the Labour Court, Rajkot calling for interference by this Court. Learned counsel for the petitioner could also not make out that the order passed by the Labour Court is illegal and requires interference by this Court under extra ordinary jurisdiction under Article 226 of the Constitution of India.

6. I find that both the petitions have not merits. Accordingly, both these petitions are dismissed. Rule is discharged in both the petitions, with no order as to costs.

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